

REMARKS/ARGUMENT

Applicants believe that the restriction requirement is not sufficiently supported by the Examiner's rationale. The alleged separate inventions are shown to be classified the same, i.e., Class 705, Subclass 35. Therefore, the search burden to the Examiner is the same for all pending claims. Additionally, the Examiner argues that the alleged separate inventions are unrelated in that they have different modes of operation, different functions or different effects. Applicants disagree.

In all instances, the operation, function or effect of the claimed invention is to conduct a dynamic auction, as that term is set forth in the application specification. In the case of alleged Invention II, drawn to claims 10-14, the dynamic auction is preceded in time by a static auction, however, the end result is the same as for alleged Invention I, drawn to claims 1-9, namely a dynamic auction. Claim 15 recites a computer program that when enabled in a suitable environment as taught in the application specification, will permit a dynamic auction to take place, in accordance with alleged Invention I. Given these relationships and the fact that only a single class/subclass need be searched by the Examiner, applicants submit that the restriction requirement represents form over function and should be withdrawn. Please note that applicant is not admitting that the alleged inventions are patentably indistinct, but only that the rationale advanced by the Examiner is believed to be flawed.

However, to comply with applicants' duty to provisionally elect an invention for substantive examination, applicants have chosen Invention I, namely claims 1-9, and

canceled, without prejudice, claims 10-15. Applicants invite the Examiner to contact the undersigned in the event that clarification of his position or correction of error concerning applicants' rationale is deemed prudent.

Dated this 24th day of May 2006.

Respectfully submitted,

GRAYBEAL JACKSON HALEY, LLP



Stephen M. Evans
Attorney for Applicants
Registration No. 37,128
155 - 108th Avenue N.E. Suite 350
Bellevue, WA 98004-5973
Tel.: (425) 455-5575
Fax: (425) 455-1046
E-Mail: sevans@graybeal.com